IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Trade Tax Revision No. 94 of 2005

M/s Sarva Shri Himneel Breweries Ltd.
Prem Nagar, Dehradun. .....Applicant/Revisionist

Versus

The Commissioner of Trade Tax
Uttaranchal, Dehradun. .....Opposite Party/Respondent

Shri S.K. Posti, learned counsel for the revisionist.
Shri Pitamber Maulekhi, Additional Advocate General for the Respondent.

Hon'ble Prafulla C. Pant, J.

This Revision, moved under Section 11(1) of U.P. Trade Tax Act, 1948, is directed against the judgment and order dated 13.09.2005, passed in S.A. No. 90 of 2003 (assessment year 2002-2003), which pertains to the sales for the month of June of year 2002.

2. Heard learned counsel for the parties.

3. Applicant/assessee- M/s Sarva Shri Himneel Breweries Limited, had made credit sales in the month of June, 2002. Due to the late payment of sale consideration, admitted tax liability was not paid in time but there is no dispute that the same was paid in the month of September and October, 2002, alongwith the interest for late payment. Assessing Authority, under Section 15-A of U.P. Trade Tax Act, 1948, has imposed 50% of the tax as penalty amounting to Rs. 2, 08, 678 /-. In the First Appeal, the penalty imposed was set aside but in the Second Appeal, the tribunal set aside the order of the First Appellate Court and imposed penalty at the rate of 10% which amounts to Rs.

83,471/-. Aggrieved by said order of the tribunal, this revision is filed.

4. Learned counsel for the revisionist argued that the assessee was a sick unit and was under the reference to B.I.F.R. (Board for Industrial and Financial Reconstruction). Its economic condition was not good, as such the imposition of penalty under Section 15 A of the aforesaid Act is wholly unjustified and against the law. In reply to this, learned Additional Advocate General on behalf of the State, submitted that only 10% penalty has been imposed which is the minimum penalty. But the question before this Court is not whether the penalty is minimum or maximum but whether it is a fit case in which penalty should have been imposed or not? It is pertinent to mention here the relevant provision of law. Clause (a) Sub-Section (1) of Section 15-A of U.P. Trade Tax Act, 1948, reads as under:-

"15-A. Penalties in certain cases- *(1) If the assessing authority is satisfied that any dealer or other person-*

(a) has, without reasonable cause, failed to furnish the return of his turnover or to furnish it within the time allowed and in the manner prescribed, or to deposit the tax due under this Act before furnishing the return or along with the return as required under the provisions of this Act; or

(b) ....."

From the above provision, it is clear that the penalty could have been imposed under aforesaid clause(a) only when there is no reasonable cause in not making the payment of tax in time. The assessee/company was under the reference to B.I.F.R. (Board for Industrial and Financial Reconstruction) and this fact has not been disputed by the State. The sales in question were the credit sales, as such it

is also not denied that the proceeds were not received by the assessee in the month of June, 2002. These two factors, if taken together certainly make out a case of reasonable cause in not making payment within time. It is not a case that the assessee had not paid the tax or has not paid the interest on the tax. Considering all these circumstances together undoubtedly this Court is of the opinion that Assessing Authority and tribunal have erred in law in imposing the penalty on the assessee, as the assessee had no intention to evade the tax.

5. In view of the above discussions, the revision deserves to be allowed. The revision is allowed. The impugned judgment and order dated 13.09.2005 is set aside. The order of the First Appellate Court is confirmed.

(Prafulla C. Pant, J.)

Dt: 22nd February, 2006
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